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show what was the cause of the death of plaintiff's intestate.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 950-952, 954, 959, 970, 976; Dec. Dig. § 276.\* 9 Va.-W. Va. Enc. Dig. 725.]

**2. Words and Phrases—"Carbonic Acid"—"Choke Damp"—"Fire Damp."**—"Carbonic acid" is commonly known as "choke damp" from its extinguishing of flame and animal life. "Fire damp" consists of light carbureted hydrogen, and is so called from its tendency to explode when mixed with atmospheric air and brought into contact with flame.

**3. Master and Servant (§ 265\*)—Death of Servant—Negligence—Proof Required.**—In an action for the death of a mine employee from inhaling deadly vapors, the burden was on plaintiff to prove that the death resulted from some negligence of defendant.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 877-908, 955; Dec. Dig. § 265.\* 9 Va.-W. Va. Enc. Dig. 722.]

Error to Circuit Court, Wise County.

Action by Loranza Wells' administrator against the Sutherland Coal & Coke Company. From a judgment for defendant, plaintiff brings error. Affirmed.

*E. M. Fulton*, of Wise, and *A. N. Kilgore*, of Norton, for plaintiff in error.

*Bullitt & Chalkley*, of Big Stone Gap, *P. H. C. Cabell*, of Richmond, for defendant in error.

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CITIZENS' NAT. BANK *v.* McDANNALD.

Nov. 12, 1914.

[83 S. E. 389.]

**1. Gaming: (§ 18\*)—Gaming Obligations—Validity.**—Under Code 1904, § 2836, declaring that every contract where money is knowingly lent to be used in wagering shall be void, a note given a bank for money which the borrower used in stock gambling is not void, where the bank did not know of that fact, though an accommodation indorser did.

[Ed. Note.—For other cases, see Gaming, Cent. Dig. §§ 36-38; Dec. Dig. § 18.\* 6 Va.-W. Va. Enc. Dig. 687.]

**2. Bills and Notes (§ 362\*)—Validity—Subsequent Holder.**—Where a note given to raise money for stock gambling was valid in the hands of the payee, it may be enforced by an accommodation in-

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

dorser, though he knew the purpose for which the money was used, as he can take shelter under the payee's good faith.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 937-943; Dec. Dig. § 362.\* 2 Va.-W. Va. Enc. Dig. 439.]

Appeal from Circuit Court, Bath County.

Action by the Citizens' National Bank against C. L. McDannald. From a judgment for defendant, plaintiff appeals. Reversed and remanded.

*J. T. McAlester*, of Hot Springs, for appellant.

*H. H. Byrd*, of Warm Springs, for appellee.

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RATLIFF *v.* MEADOWS et al.

Nov. 12, 1914.

[83 S. E. 395.]

**1. Exceptions, Bill of (§ 40\*)—Settlement—Time—Extension—Consent—Record.**—Under Code 1904, § 3385, providing for the settlement and filing of bills of exceptions, the time for signing and filing a bill cannot be postponed by the court beyond 30 days, except by consent of the parties entered of record as a part of the court's final order; and where there was no memorandum entered of record of such consent, a bill filed after the 30 days allowed by statute had expired was nugatory.

[Ed. Note.—For other cases, see Exceptions, Bill of, Cent. Dig. §§ 44, 45, 57-64; Dec. Dig. § 40.\* 5 Va.-W. Va. Enc. Dig. 392.]

**2. Exceptions, Bill of (§ 40\*)—Settlement—Time—Extension—Consent—Nunc Pro Tunc Order.**—Where consent to an extension of time for settlement and filing of a bill of exceptions beyond the time allowed by statute is given at the time the final order is entered, but no record of such consent is made at the time, the fact that the consent has been given cannot be shown by a nunc pro tunc order.

[Ed. Note.—For other cases, see Exceptions, Bill of, Cent. Dig. §§ 44, 45, 57-64; Dec. Dig. § 40.\* 5 Va.-W. Va. Enc. Dig. 392.]

**3. Appeal and Error (§ 544\*)—Record—Instruction—Bills of Exception—Review.**—Instructions given or refused cannot be reviewed on a writ of error, unless made a part of the record by a proper bill of exceptions.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2412-2415, 2417-2420, 2422-2426, 2428, 2478, 2479; Dec. Dig. § 544.\* 1 Va.-W. Va. Enc. Dig. 563; 5 Va.-W. Va. Enc. Dig. 361.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.